

**AFFIDAVIT**

I, Kevin Nightingale, being duly sworn state the following:

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the examination of nine separate items of property, which are currently in law enforcement possession at the Independence, Missouri Police Department at 223 N. Memorial Drive, Independence, Missouri, within the Western District of Missouri, and the extraction from the Target Telephones of electronically stored information:

- a. Phone number 1: an Alcatel brand phone, black in color with a black case bearing IMEI number 015552004134279, and there is no visible model number printed on the exterior of the phone;
- b. Phone number 2: a TCL brand phone, black in color, with no visible model number or IMEI number;
- c. Phone number 3: a Samsung brand phone, model SM-A102U, black in color, bearing IMEI number 356983102728729;
- d. Phone number 4: a Motorola brand phone, model XT1952-4, Type: M3C98, black in color, with no visible IMEI number;
- e. Phone number 5: a Samsung brand phone, model SM-J700P, white in color, bearing DEC number 089 483 879 104 292 672, and HEX number 355 628 074 180 40;
- f. Phone number 6: an LG brand phone, black in color, bearing IMEI number 358940100345813, with no visible model number;
- g. Phone number 7: a Samsung brand phone, model SM-S102DL, black in color, bearing IMEI number 357855106356484;
- h. Phone number 8: an LG brand phone, model CV7A SP10, black in color, bearing MEID number 089 458 280 005 473 920 (this phone was in Joseph L. McCurdy's lap at the time of stop); and
- i. Phone number 9: an I-phone, black in color, bearing no visible model information or IMEI information (this phone was recovered from McCurdy's person at time of arrest) (all nine phones collectively referred to as "Target Telephones").

2. I am an "investigative or law enforcement officer" of the United States within the meaning of Section 2510(7) of Title 18, United States Code, and empowered by law to conduct investigations and to make arrests for offenses enumerated in Title 18, United States Code, Section 2516.

3. I am a Detective with the Independence, Missouri Police Department (IPD). I am assigned to the Drug Enforcement Unit (DEU) of the Independence Police Department and have been assigned in this capacity since 2003. I was previously assigned to the Metro Meth Drug Task Force and the Jackson County Drug Task Force as a Task Force Officer while with the IPD DEU. I have been employed with IPD since October of 1996.

4. During my previous IPD assignments and my current assignment with DEU, I have participated in numerous investigations of individuals who have violated state and federal controlled substance laws. During the course of these investigations, I have participated in all normal methods of investigation, including but not limited to electronic surveillance, visual surveillance, questioning of witnesses and informants, pen register installations and wiretap investigation. Participating in these investigations has provided me with extensive experience in ascertaining the tactics employed by drug traffickers.

### **Controlled Substance Distribution**

5. Based on my training and experience, I am familiar with how controlled substances are manufactured, obtained, diluted, packaged, distributed, sold, and used. Further, I know that individuals who deal in illegal controlled substances commonly maintain addresses or telephone numbers in mobile telephones, utilizing the internal mobile phone electronic storage, which reflect names, addresses and/or telephone numbers for their associates, to include sources of supply, distributors, and customers, in their criminal organizations. In addition to continuing their illegal businesses, these individuals utilize mobile telephone systems to maintain contact with their criminal associates. Based on my training and experience, I know that individuals engaged in the sales and distribution of illegal controlled substances commonly use multiple cellular telephones, telephone numbers, and change out SIM Cards in cellular telephones, in order to thwart law enforcement investigations. In addition, some cellular telephones on the market today are considered "smart phones." Smart phones allow the user to store large amounts of data to included, but not limited to: emails, photos, videos, notes, contact lists, social media, and text messages. Through my training and experience I know individuals who deal in illegal controlled substances utilize smart phones to further their criminal enterprise via text messaging, emails, instant messaging and social media. Furthermore, drug traffickers often take, or cause to be taken, photographs of themselves, their associates, their properties, their illegal products, and the cash proceeds from illegal transactions. These individuals usually maintain this data in the internal electronic storage of the mobile telephone.

### **PROBABLE CAUSE**

6. On March 14, 2020 at 3:00 p.m., IPD Officer Jacob Pope observed a black 1989 Mercury Sable vehicle acting suspicious in the area of Cottage Avenue and Linden Avenue by driving slowly down the street while they were completing a call for service in the area.

7. The driver and sole occupant of the Mercury Sable, later identified as Joseph L. McCurdy (hereafter "McCurdy") appeared to observe IPD officers by looking directly at the officers, parked in the intersection and quickly pulled into a driveway just south of the intersection, exiting the vehicle after a moment and approached the front door. McCurdy knocked on the front door several

times before making contact with an older white female and then returned to the vehicle. IPD Officer Dustin Stewart approached the vehicle to acquire a license plate, at which time McCurdy quickly reversed out of the driveway before going southbound on Cottage Avenue. The license plate attached to the vehicle showed to be a Kansas temporary license plate number C346067. The license plate responded with a felony warrant to Joseph McCurdy out of Pottawatomie County, Kansas for burglary. IPD officers drove the speed limit, keeping the vehicle in sight as it traveled through residential streets. Assisting IPD officers arrived in the area and attempted to deploy stop sticks in an effort to avoid a vehicle pursuit due to the road conditions and McCurdy's dangerous driving (including speeding, failure to use a turn signal, careless driving, and fleeing in an attempt to elude).

8. McCurdy attempted to avoid the stop sticks at Pacific Avenue and Cottage Avenue, driving over the railroad tracks and successfully disabling his vehicle. McCurdy then continued to attempt to flee by revving the engine with the vehicle in gear, however the vehicle was inoperable and McCurdy was taken into custody after a felony car stop at 3:06 p.m. McCurdy provided Officer Stewart with the name of Shane Cockrum, with a date of birth of March 27, 1983, however after confirming with Missouri Department of Revenue photographs, it was learned that the driver was in fact Joseph L. McCurdy, with a date of birth of September 1, 1982. IPD Officer Stewart issued traffic citations to McCurdy for speeding, failure to use a turn signal, careless driving, fleeing in an attempt to elude, and providing false information about his true identity.

9. During a search of McCurdy's person incident to arrest, a black headphone case containing six plastic bags of white crystal substance consistent with that of methamphetamine was removed from his front left jacket pocket. Also inside the black headphone case was \$359.25 in United States currency, a blue torch lighter, and a "Double-Digit" electronic scale that is capable of weighing up to 100 grams. A police tow was ordered for the vehicle. McCurdy stated he needed medical assistance and he was transported to CenterPoint Hospital for evaluation. McCurdy was later released from the hospital and transported to the Independence Detention Unit at 4:46 p.m. for booking on his charges by Officer Stewart.

10. During an inventory of the vehicle incident to arrest, approximately 129 plastic zip bags were located in a black bag in the trunk. The plastic zip bags were clear in color and were approximately 4 inches by 4 inches (there were two slightly different size of zip bags), a size Detective Nightingale knows is commonly used for the distribution of 1/8 ounce to 1 ounce amounts of controlled substances. Nine total cell phones were located; seven cell phones were located in the vehicle and two cell phones were located on McCurdy's person (one located in his pocket and one initially observed on his lap and later located on the driver's seat).

11. IPD Officer Pope responded to the Drug Enforcement Unit to process the evidence. The six bags containing the white crystal substance were weighed for a combined total of 95.56 grams including their original packaging. Detective Nightingale of the IPD Drug Enforcement Unit tested all six bags of the substances on the TruNarc analyzer in which all six bags tested positive for methamphetamine, a Schedule II Controlled Substance.

12. McCurdy was placed on a 24-hour hold for possession of a controlled substance (methamphetamine) with the intent to distribute and possession of drug paraphernalia.

13. On March 14, 2020 at 10:15 p.m., Detective Nightingale and Detective Michael Hosack responded to the Independence Detention Unit in an attempt to conduct an interview under *Miranda* with McCurdy in reference to his arrest. Detective Nightingale introduced himself, obtained basic pedigree information, and advised McCurdy of the charges for which he was being held. Detective Nightingale produced a *Miranda* waiver and read the form aloud to McCurdy. McCurdy then read the form and signed the *Miranda* waiver at 10:20 p.m., indicating that he understood his rights and wanted to speak with a lawyer. McCurdy printed, "Need Lawyer," on the bottom of the *Miranda* form. Detectives Nightingale and Hosack immediately concluded the attempted interview with McCurdy and returned him to a cell in the detention unit.

14. Detective Nightingale seized the Target Telephones in order to apply for a search warrant to review the contents. The Target Telephones remain in the custody of the Independence, Missouri Police Department, within the Western District of Missouri.

15. Joseph L. McCurdy was charged by complaint in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(B) with possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a class B felony in case number 20-MJ-00033-JTM (SWH). The methamphetamine was submitted to the Kansas City Police Crime Laboratory for confirmatory testing. The Kansas City Police Crime Laboratory confirmed that the methamphetamine is at least 50 grams of actual methamphetamine, or a violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(A), possession with the intent to distribute 50 grams or more of methamphetamine actual, a class A felony.

16. From training and experience, I know individuals engaged in drug trafficking often use cellular telephones to set up their transactions and frequently have stored text messages, phone calls, and stored image and video files indicating prior illegal transactions. I also know GPS devices store location data, sometimes for years, of previous visited locations and the date and time of those visits. I am also aware that communication with fellow drug dealers and drug customers occur by a variety of means, including: email, social networking, through other internet clients, and other means facilitated by computers/smartphones being used on the internet and that individuals involved in drug use and drug trafficking will often store information on cellular phones related to their drug trafficking activity.

FURTHER AFFIANT SAYETH NAUGHT.

Presented by reliable electronic means and sworn to telephonically.

Kevin Nightingale, Detective  
Independence, Missouri Police Department

11:21 AM, Mar 27, 2020

Subscribed and sworn before me this 27th day of March, 2020. Sworn to by telephone

Lajuana M. Counts

Honorable Lajuana M. Counts  
United States Magistrate Judge  
Western District of Missouri

